IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 4768 of 2005

Smt.Savitribai Uttamchand Lakhani ..Petitioner

Vs.

1. Additional Collector and
Competent Authority, and ors. ..Respondents

Shri S.G.Karandikar for petitioner.
Smt.Sushma Bhende, A.G.P. for respondents.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
19th August,2005

P.C.

. Rule. Learned A.G.P. waives service. By consent, rule is made returnable forthwith.

2. The challenge is to the order dated 25th May, 2005 passed by the Additional Collector and Competent Authority, Thane Urban Agglomeration, cancelling the exemption granted to the petitioner under section 20(1) of Urban Land (Ceiling and Regulation) Act, 1976, hereinafter for brevity's sake referred to as the "ULC Act". The petitioner is the owner and holder of land bearing old Survey No.119/3 part (new 102/3 part) within the Urban Agglomeration of Thane. The return filed by the

petitioner under the provisions of sec.6(1) of ULC Act was adjudicated upon by the Competent Authority and Additional Collector by his order dated 3rd January, 1995 and an area admeasuring 1020.50 sq.meters was declared to be surplus from the said Survey No.102/3 part. A scheme for exemption under sec.20(1) was submitted by the petitioner to the Competent Authority and by order dated 6th March, 1995 of the Competent Authority exemption was granted on certain terms and conditions mentioned in the order. According to condition no.5 of the said order construction was to commence within one year and was required to be completed within three years.

3. It appears that the petitioner after receiving the order for exemption made an application to the Collector, Thane for converting the land into non agriculture. By letter dated 5th June, 1998 the Collector informed that the petitioner's request cannot be granted unless various conditions and requirements mentioned therein are satisfied by the petitioner. One of the condition was to obtain N.O.C. from the Commissioner, Mira Bhayander Municipal Corporation. Accordingly the petitioner applied for building permission and plans submitted

by the petitioner were duly sanctioned. However, it appears that the requisite N.O.C. was not issued in time by the Commissioner. Further it appears that as a result of the order passed by this Court in Writ Petition No.5118 of 1995 the Collector insisted upon the written consent from the Estate Investment Company Pvt.Ltd. It appears that in Writ Petition No.5118 of 1995, this Court has passed an interim order restraining the Collector from granting any N.A.permission without written consent of the said Estate Investment Company. It appears that the petitioner was able to get written consent from the Estate Investment Company only in February, 2005. In the mean time the petitioner applied for extension of time prescribed under the exemption order and time was extended from time to time and last extension granted by the Competent Authority expired on 1st July, 2004. The petitioner again applied for extension but the request for extension of time was declined and by the impugned order of the Competent Authority the exemption granted in favour of the petitioner was revoked.

4. Shri Karandikar, learned counsel appearing for the petitioner, submitted and not without

sufficient force that the petitioner could not have commenced actual work of construction without obtaining all necessary permissions from various authorities like Mira Bhayander Municipal Corporation and Collector, Thane. He submitted that although the petitioner's application was sanctioned way back in the year 1995, actual construction could not proceed since the matter regarding N.A. permission was pending with the Collector, Thane. Shri Karandikar, therefore, prayed that the Collector be directed to grant further extension till the end of March, 2006 by way of last chance. He stated that the petitioner will not apply for further extension. Learned A.G.P.on the other hand submitted that sufficient indulgence was shown to the petitioner and the order of cancellation came to be passed as the petitioner failed to commence the construction even after 6 years.

5. Having considered the submissions made by the learned counsel we are of the view that the request of the petitioner for extension deserves to be accepted. It is no doubt true that the petitioner has not commenced construction within the prescribed time but we feel that the petitioner is

not solely responsible for the delay. The N.A. permission could not be issued by the Collector in view of the interim order granted by this Court and the necessary consent was granted by the Investment Company only in February, 2005. In view of the peculiar facts and circumstances of the case, we direct the Collector to grant the request of the petitioner to extend the time till end of March, 2006 as a last chance. It is made clear that no further extension will be granted under any circumstances and if the petitioner fails to commence the construction within the said period the exemption shall stand revoked and the Collector shall be entitled to take possession of the land. The impugned order dated 25th May, 2005 passed by the Collector is quashed and set aside. Rule is made absolute accordingly. Petitioner shall pay the cost of the respondents quantified at Rs.25,000/-